



U.S. House of Representatives Committee on the Judiciary

F. James Sensenbrenner, Jr., Chairman

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News Advisory

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Sensenbrenner House Floor Statement on Flag Desecration Amendment

WASHINGTON, D.C. – House Judiciary Committee Chairman F. James Sensenbrenner, Jr. (R-Wis.) delivered the following remarks on the House floor today during debate on H. J. Res. 10, which would amend the U.S. Constitution to grant Congress authority to prohibit the physical desecration of the American flag:

I rise today in support of H. J. Res. 10, which would amend the Constitution to grant Congress authority to prohibit the physical desecration of the American flag.

Mr. Speaker, the American flag represents the shared history and common future of all Americans and our collective commitment to the preservation of the ideals enshrined in our Constitution. The flag flies proudly in times of peace and war, prosperity and crisis – reminding the world of our unflinching resolve to protect the freedom and equality it symbolizes.

From the early days of the Republic to contemporary times, the flag has rallied and sustained the spirit of the Nation. In World War II, it was carried onto Normandy Beach by soldiers who liberated a continent from darkness, and raised on Iwo Jima to steel the resolve of embattled Marines. During the Cold War, it affirmed the universal values of human freedom and dignity for citizens of countries whose governments ignored both.

Following the attacks of September 11, 2001, the flag was unfurled at the Pentagon and raised from the rubble at Ground Zero to unify the spirit of a shaken Nation. Unique among all American symbols, the flag captures the pride and spirit of the American people, and serves as an international symbol of freedom and opportunity.

For the first two centuries of our Constitution's existence, it was permissible to protect America's preeminent symbol from desecration. In 1989, the Federal government and 48 states had exercised this authority. However, that same year, a closely-divided Supreme Court invalidated these laws by holding that burning an American flag as part of a political

demonstration was protected by the First Amendment. The Congress quickly responded to this decision, but the following year, in another 5-4 decision, the Court struck down the Federal “Flag Protection Act” in *United States v. Eichman*. Since 1994, over 119 incidents of flag desecration have been reported, and the flag of the United States remains vulnerable.

Mr. Speaker, the Framers of the Constitution recognized that there would be circumstances necessitating changes to the Constitution. Toward that end, they provided the people with an amendment process embodied in Article V of the Constitution. The Founders recognized that the constitutional amendment process is absolutely vital to maintaining the democratic legitimacy upon which republican self-government rests. While our courts have authority to interpret the Constitution, under our system of government, the *American people* should and *must* have ultimate authority to amend it.

As a result, H. J. Res. 10 does not upset the doctrine of judicial review. Rather, it utilizes a remedy envisioned by Founders to effectuate the will of the people. Moreover, H. J. Res. 10 will not prohibit flag desecration. Rather, should the States ratify the amendment, it will enable Congress to enact legislation to establish boundaries within which such conduct may be prohibited.

The amendment process is one that should not be taken lightly. However, because of the narrowly-divided *Johnson* and *Eichman* Supreme Court decisions, a constitutional amendment provides the only remaining option for the American public and their elected representatives to restore protection to our Nation’s preeminent symbol.

In December, 1792, James Madison asked the question, “Who are the best keepers of the People’s Liberty?” While it might come as a surprise to some, he did not answer “The Supreme Court.” Rather, Mr. Madison answered, “The People themselves. The sacred trust can be nowhere so safe as in the hands most interested in preserving it.”

All 50 state legislatures have passed resolutions calling on Congress to pass a flag protection amendment, and polls demonstrate the overwhelming majority of Americans have consistently supported a flag protection amendment.

Language identical to H. J. Res. 10 has passed the House on four separate occasions. The Congress must act with bipartisan dispatch to ensure that this issue is returned to the hands of those most interested in preserving freedom – the people themselves.

Mr. Speaker, the flag of the United States is a critical part of America’s civic identity. Millions of Americans pledge daily allegiance to the flag, and our national anthem pays homage to it. America's soldiers salute the flag of the United States in times of peace, and generations of America's soldier have fought and died for it in times of war.

I urge my colleagues to join with me in supporting this important measure to provide this unique and sacred American symbol with the dignity and protection it deserves and demands.

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